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10 UNITED STATES DISTRICT COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13  
14 IN RE APPLE & AT&TM ANTITRUST  
LITIGATION

CASE NO. C 07-5152 JW (RS)

**DEFENDANT APPLE INC.'S PROPOSED  
DISCOVERY PLAN**

**(SUBMITTED PURSUANT TO THE  
AUGUST 13, 2008 ORDER REGARDING  
DISCOVERY PLAN)**

Date: None Set  
Time: None Set  
Place: Courtroom 4, 5<sup>th</sup> Floor  
Judge: Honorable Richard Seeborg

1 Pursuant to the Court's August 13, 2008 Order Regarding Discovery Plan,  
2 defendant Apple Inc. ("Apple") hereby submits its separate proposed discovery plan in this  
3 matter. Apple submits its separate plan because the parties were unable to reach agreement on a  
4 joint plan after good faith meet and confer efforts, primarily due to disagreement on the issue of  
5 bifurcating discovery to focus on class certification issues prior to merits-based discovery.

6 Apple believes that, due to the significant questions regarding class certification  
7 raised by the size and complexity of the alleged class (and differing allegations as to the  
8 individual named plaintiffs' circumstances and actions), bifurcating discovery would serve to  
9 effectively and efficiently streamline the instant litigation such that the parties do not needlessly  
10 engage in costs and efforts that may prove to be unnecessary. Although Apple would be pleased  
11 to brief this issue in greater detail at the Court's direction, such bifurcation is fairly standard. *See,*  
12 *e.g.,* Federal Judicial Center, Manual For Complex Litigation § 21.14 (4th ed. 2004) ("Discovery  
13 relevant only to the merits delays the certification decision and may ultimately be unnecessary.  
14 Courts often bifurcate discovery between certification issues and those related to the merits of  
15 allegations."); William W. Schwarzer et. al, Cal. Prac. Guide: Fed. Civ. Pro. Before Trial § 10:740  
16 (The Rutter Group 2008) ("Discovery on the merits of the class claim is usually deferred until it is  
17 certain that the case will be allowed to proceed as a class action."); Order Bifurcating Discovery  
18 Pending The Court's Ruling on Plaintiffs' Motion for Class Certification at 1, *In re ATI Tech.*  
19 *HDCP Litig.*, No. C 06-01303 JW ( N.D. Cal. Feb. 11, 2007) (J. Ware) ("The parties shall limit  
20 their discovery to class certification issues. This limitation shall be in effect until the Court's  
21 ruling on Plaintiffs' Motion for Class Certification."); Order Following Further Case Management  
22 Conference at 1, *Charoensak v. Apple Computer, Inc.*, No. C 05-00037 JW ( N.D. Cal. Nov. 21,  
23 2006) (J. Ware) ("The parties shall limit their discovery to class certification issues. This  
24 limitation shall be in effect until Defendant files its anticipated motion for summary judgment.")

25 As bifurcation makes sense in the particular circumstances of the highly complex  
26 purported class action here, Apple accordingly submits the following proposed discovery plan:

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Class certification discovery commences	At the direction of Judge Ware, subsequent to the Court's final rulings on all motions to dismiss/other motions on the pleadings
Initial disclosures due	30 days after commencement of class discovery
Class certification discovery closes	120 days after commencement of class discovery
Motion for class certification due	30 days after close of class discovery
Opposition to motion for class certification due	90 days after close of class discovery
Reply in support of motion for class certification due	120 days after close of class discovery
Hearing on class certification	140 days after close of class discovery
Merits-related discovery commences	At Judge Ware's direction, upon resolution of class
Merits discovery closes	270 days after commencement of merits discovery
Filing of plaintiffs' expert report(s) due	60 days after close of merits discovery
Filing of defendants' expert report(s) due	90 days after close of merits discovery
Filing of rebuttal expert report(s) due	104 days after close of merits discovery
Expert discovery closes	150 days after close of merits discovery
Dispositive motions due	60 days after close of expert discovery
Response to dispositive motions due	90 days after close of expert discovery
Reply in support of dispositive motions due	105 days after close of expert discovery
Pretrial conference	At the discretion of the Court
Trial	At the discretion of the Court

Respectfully submitted,

By /s/ Sadik Huseny  
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